IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7341 of 1993

with

SPECIAL CIVIL APPLICATION No 12070 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAIL OSMAN MAKRANI

Versus

SAINIK SCHOOL

Appearance:

In both the petitions.

MR HA PANIWALA for Petitioner No. 1

MR HD CHUDASAMA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/12/2001

ORAL JUDGEMENT

In both these petitions common issue is involved as to whether the petitioners are entitled to the pensionary benefits though they have retired prior to commencement of operation of the pension scheme and therefore both these petitions are being decided of by common judgment.

2. The petitioner of Special Civil Application No. 7341/93 has worked with the respondent school and retired from service on 30-6-1985. At the time of retirement, the petitioner was given benefits under the contributory provident fund. Afterwards, the respondent school which is under the control of Ministry of Defence, Government of India, introduced scheme of pension with effect from April, 1988. Under the said scheme pensionary benefits are available to those employees who have retired after 1-4-1988.

3. The petitioner of Special Civil Application No.12070/93 worked with the respondent school from 1-12-1973 to 1-10-1983 and retired from 1-10-1983 and at the time of retirement, he was given by the Contributory Provident Fund. The Ministry of Defence, Government of India introduced the scheme of pension with effect from 1988 which provides the benefits of that scheme to the employees who have retired on or after 1-4-1988. Both these petitions have been filed on the ground that it is unfair discrimination for the petitioners not to allow the option of obtaining the benefits of the Pension Scheme to the employees who have retired before the year 1988.

4. The learned counsel for the petitioners contended that the petitioners are entitled to the pensionary benefits on the basis of the decision of the Supreme Court in Nakara case reported in 1985 (Supple.) SCC 41 i.e. AIR 1985 SC 1367, wherein, it has been held by the Supreme Court that the cut off date for grant of pensionary benefits and implementation of the pension scheme is arbitrary and unreasonable.

5. Heard the learned counsel for the parties and considered the material on record.

6. In the case of the Union of India and others Vs. Lieut (Mes.) E. Iacats reported in 1997 (7) SCC 334, wherein it has been held as under :

"As the cutoff date was retrospective this Court also examined the reasonableness of this retrospective operation. It found the cutoff

> date reasonable, it being based upon the date of appointment of the Pay Commission. In a recent decision in the case of Commander, Head Quarters V. Capt. Biplabendra Chanda, (1977 (1) SCC 208) new rules reducing the minimum qualifying service for pension came into effect from 1-1-1986. The respondent who had retired prior to this date was not granted pension under the old Rules as he did not qualify for pension under those Rules. This Court distinguishing Nakara case held that he cannot be retrospectively made eligible under the new Rules. Pensioners under the old rules and pensionary under the new Rules are not similarly situated. Each set of retiring employees will be governed by their own rules in force when they retire."

7. As such, the cut off date has not been affirmed in the later case by the Supreme Court itself. On the basis of the cut off date, the petitioners are not eligible for pensionary benefits under the Pension Scheme. Therefore, these petitions have no merits. Accordingly, both these petitions are dismissed. Rule is discharged in both the petitions, with no order as to costs.

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/JVSatwara/

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